FILED
MAR 1 1956

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 620

THE DELAWARE AND HUDSON COMPANY, *Petitioner*

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY and CONNECTICUT RAILWAY AND LIGHTING COMPANY, *Respondents*

REPLY BRIEF OF THE DELAWARE AND HUDSON COMPANY TO BRIEFS OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND CONNECTICUT RAILWAY AND LIGHTING COMPANY

FREDERICK H. WIGGIN,
Attorney for Petitioner,
THE DELAWARE AND HUDSON COMPANY,
c/o WIGGIN & DANA,
205 Church Street,
New Haven, Connecticut.

JOHN W. BARNETT,
205 Church Street,
New Haven, Connecticut,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1955

No. 620

THE DELAWARE AND HUDSON COMPANY, *Petitioner*

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY and CONNECTICUT RAILWAY AND LIGHTING COMPANY, *Respondents*

REPLY BRIEF OF THE DELAWARE AND HUDSON HAVEN AND HARTFORD RAILROAD COMPANY AND CONNECTICUT RAILWAY AND LIGHTING COMPANY

Let us remember these undisputed facts. The Principal Debtor (The New York, New Haven & Hartford Railroad Company) guaranteed payment of the par value of shares of the preferred stock of The Boston Railroad Holding Company. The petitioner, The Delaware and Hudson Company, has a large investment in these shares. The Principal Debtor guaranteed such payment upon liquidation of the Holding Company or upon a statutory liquidation sale of its assets. Since the Principal Debtor was the chief owner of the shares of the Holding Company, it alone was held by the Bankruptcy Court to be in a position to move for such liquidation or sale. It never did so. The Interstate Commerce Commission directed repudiation of the guarantee

by the Principal Debtor, but reserved to stockholders the privilege of proving a claim for damages for the breach. After Delaware had made an unsuccessful effort in the reorganization proceedings to have its claim for damages allowed, it pursued the natural remedy of obtaining by legislative act a liquidation in Massachusetts. This at length satisfied the technical requirement for establishing breach of the guarantee contract. However, it took many years of litigation to do this because of the determined opposition of the Principal Debtor.

Pages 75a and 76a of Delaware's Appendix to Brief contain the pertinent portion of the Memorandum of Decision of the Bankruptcy Court concerning Claim 82 (Delaware's original petition for allowance of the claim in bankruptcy). They show the true reason for disallowance. This passage coupled with the provisions of Section 57d. of the Bankruptcy Act and Section J(17) of the Plan of Reorganization (p. 6 of our Petition for Certiorari) constitute what we claim to be a sufficient reply to the two briefs in opposition.

Petitioner persists in its claim of a *legal right* to participate in the fund reserved for claims not previously liquidated.

Respectfully submitted,

FREDERICK H. WIGGIN,
Attorney for Petitioner,

THE DELAWARE AND HUDSON COMPANY,
c/o WIGGIN & DANA,
205 Church Street,
New Haven, Connecticut.

JOHN W. BARNETT,
205 Church Street,
New Haven, Connecticut.
Of Counsel.

Dated: February 28, 1956.